IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.219 OF 2005
IN
SUMMARY SUIT NO.211 OF 2005

Mr.Naresh Punwani & Anr.,
Trustees Alitalia Staff
Provident Fund ..Plaintiffs.

Vs.

M/s.Gilteged Management
Services Ltd. ..Defendants.

Mr.N.Engineer i/b.M/s.Desai & Chinoy for the Plaintiffs.

Mr.Y.N.Adhia for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 20TH DECEMBER, 2005

P.C. :

The suit is filed to recover an amount of Rs.5,19,316.67 together with interest. The Plaintiff placed an order with the Defendants for the purchase of 10.25% G.O.I. 2021 Bonds for an aggregate sum of Rs.5,19,316.67. The Plaintiffs had paid the entire purchase price in respect thereof. It is an admitted position that the securities have not been delivered to the Plaintiffs.

2. There is no dispute regarding the above facts. By a letter dated 21.5.2002 the Defendants stated

that they were unable to deliver the securities or make payments as their accounts are frozen. They further requested time to resolve the matter.

3. In reply to the Plaintiff's notice of demand, the Defendants addressed a letter dated 3.7.2002. By the said letter, the Defendants expressly stated that they had no intention to retain the Plaintiff's securities or the proceeds. The Defendants further stated that upon receiving the securities for Plaintiff's clients or its worth from M/s.Home Trade Ltd. they would immediately hand over the same to the Plaintiffs. The Defendants requested the Plaintiffs to bear with them.

4. Thus, by letter dated 3.7.2002 the Defendants implicitly, if not expressly, agreed to return the amounts in the event of the securities being made available.

5. The only defence is that the Plaintiffs are entitled to recover the said amount from Home Trade Ltd. Ms.Home Trade Ltd. is the agent of the Defendants and not the Plaintiffs. This defence is therefore unfounded.

6. It was stated that the Defendants merely acted as the agents of the Home Trade Ltd. There is nothing on record which suggests that the Defendants acted only as agents of Home Trade Ltd. Nor is there anything on record which suggests that the Plaintiffs dealt with the Defendants on the basis that they were merely agents of M/s.Home Trade Ltd.

7. In the circumstances, there is no defence to the Summons for Judgment. However, interest was demanded only by Plaintiff’s Advocate’s notice dated 21.6.2002.

8. In the circumstances, Summons for Judgment is made absolute and the suit is decreed in the sum of Rs.5,19,316.67 together with interest thereon at 12% per annum from 21.6.2002 till payment and/or realisation.

Refund as per rules.